# IN THE SUPREME COURT
OF THE UNITED STATES.

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OCTOBER TERM, 1900.

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**No. 173.**

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DULUTH AND IRON RANGE RAILROAD COMPANY,
Plaintiff in Error,

VERSUS

THE COUNTY OF ST. LOUIS,
Defendant in Error.

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## BRIEF AND ARGUMENT ON BEHALF OF DEFENDANT IN ERROR.

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### Statement.

Since the admission of the State of Minnesota into the Union, the following provisions have always remained a part of the Constitution:

"All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state. * * *" Article ix., sec. 1.

"Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money; but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property used for religious purposes and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars for each individual, shall, by general laws, be exempt from taxation." Id., sec. 3.

Congress in providing a temporary government for the Territory of Minnesota, adopted by Section 6 of the Organic Act, the following limitation in the matter of taxation:

"And be it further enacted, that the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; * * * nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

Prior to 1858 the Territory of Minnesota made certain grants to aid in the construction of railroads, wherein it was provided, in substance, that such grantee should pay into the state treasury annually, in lieu of the ordinary form of taxation, certain percentages of their gross earnings. Various conditions were noted in such enactments, providing that the lands so granted should be taxable in the ordinary way, when sold or contracted to be sold. These provisions have been fruitful of litigation, involving chiefly the question as to whether the reorganization of certain companies or certain special conveyances, sometimes in the form of trust deeds, amounted to a conveyance of the property within the meaning of the territorial contract, and thereby rendered the lands taxable. But since the early case of *First Div. of St. Paul & Pacific R. Co. vs. Parcher*, 14 Minn. 297, decided in 1869, the legislature of the state never attempted to fix a new measure of taxation of railroad lands so granted either by the territory or state, until 1896, when chapter 168 of the laws of 1895 was submitted to the people for ratification, the validity of which is involved in this case. Such territorial enactments are neither involved in this case or in *Stearns vs. State of Minnesota*, pending at this term.

In 1871 the people of the State of Minnesota adopted the following amendment to its Constitution:

> "Any law providing for the repeal or amendment of any law or laws heretofore or

> hereafter enacted, which provides that any railroad company now existing in this state or operating its railroad therein, or which may be hereafter organized, shall, in lieu of all other taxes and assessments upon their real estate, roads, rolling stock and other personal property, at and during the time and periods therein specified, pay into the treasury of this state a certain per centum therein mentioned of the gross earning of the railroad companies now existing, or hereafter organized, shall, before the same shall take effect and be in force, be submitted to a vote of the people of the state, and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them."
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> *Const.*, Minn., Art. IV., Sec. 32a.

Pursuant to the said amendment of 1871 the legislature of Minnesota submitted to the voters thereof, at a general election held therein in the month of November, 1896, for their approval or rejection the statute enacted in 1895, providing for the taxation by the ordinary method of all lands granted to railroad companies. The statute so submitted was adopted, the first three sections of which are as follows:

> "Section 1. All lands in this state heretofore or hereafter granted by the State of Minnesota, or the United States, or the Territory of Minnesota, to any railroad company, shall be assessed and taxed as other lands are taxed in this state, except such parts of said lands as are held, used or occupied for rights-of-way,

gravel pits, sidetracks, depots, and all buildings and structures which are necessarily used in the actual management and operation of the railroad of said companies; provided, that said railroad companies shall continue to pay taxes into the state treasury upon their gross earnings in the same manner and in the same amount as is now provided by law, and that nothing in this act contained shall be construed to repeal said laws, except in so far as the same relate to the tax upon said lands.

"Sec. 2. Such portion or portions of any act or acts, general or special, of the State or Territory of Minnesota, heretofore enacted, which provides or attempts to provide for any exemption of the lands hereby declared taxable from taxation, or for any other method of taxing said last mentioned lands different from the method of taxing other lands in this state, or which are in any manner inconsistent with the provisions of this act, are hereby repealed.

"Sec. 3. If this act shall be held to be void, so far as it applies to the lands of any particular railroad company in this state, it shall not be ground for declaring it void of any application to any other company not similarly situated."

*Laws Minn.*, 1897, p. X.

The lands in question, taxes upon which are being contested herein, are swamp lands and were granted to the State of Minnesota by Act of Congress of March 12, 1860, extending the swamp land grant of Arkansas to Minnesota.

12 *U. S. Statutes at Large*, p. 3.
9 *U. S. Statutes at Large*, p. 519.

These lands were granted by the State of Minnesota to the plaintiff in error, the Duluth & Iron Range Railroad Company, by the Act of March 9, 1875, being chapter 54 of the Spec. Laws of 1875, as amended. The original enactment limited the grant to lands situated in St. Louis, Lake and Cook Counties; but section 1 of said chapter 54 was amended by chapter 87 of the Spec. Laws of 1885, at a time when the Duluth & Iron Range Railroad Company was practically completed, and the grant enlarged so as to include lands in other counties and to provide for a more advantageous method of selection. By the terms of the original grant it was provided that "none of the lands hereby granted shall be subject to taxation until the expiration of five years from the issuance of the patent by the state, unless previously sold or disposed of by said railroad company." To consult the act as amended, see Appendix A.

The Duluth & Iron Range Railroad Company commenced constructing its railroad on or about the 1st day of June, 1883, and completed its construction December 20, 1886 (Record, Fol. 100); and on the 16th day of May, 1884, duly accepted the terms of what is known as the Taylors' Falls Act, being chapter 111 of the Spec. Laws of 1873, and has since paid a three per cent gross earnings tax pursuant to the provisions of the latter act. (Record, Fol. 103).

To consult chapter 111 of the Spec. Laws of 1873, known as the Taylors' Falls Act, see Appendix B.

Particular attention is called to the fact that plaintiff in error relies upon a grant purporting to create a temporary exemption from taxation, as well as upon a pretended contract which it is assumed perpetuated a fixed measure of taxation, *both of which were made or entered into subsequent to the adoption of the Constitutional amendment of* 1871.

Pursuant to the passage and approval of chapter 168 of the laws of 1895, the taxes in question were duly extended upon the lands granted to plaintiff in error by the State of Minnesota, situated in St. Louis County. The tax list was filed in the office of the Clerk of the District Court in and for the County of St. Louis, and thereupon the plaintiff in error interposed its answer. The trial of the issues resulted in an affirmance of the validity of such taxes and the Supreme Court of Minnesota sustained such decision. The opinion of the Court is found at Folios 123 to 125 of the Record.

## ARGUMENT.

**Did the railroad company have a valid contract of exemption for five years by the act granting the lands, and thereafter, by an acceptance of the Taylors Falls Taxation act, was a perpetual contract for a commuted system of taxation entered into, which the State is inhibited from impairing?**

Counsel for plaintiff in error discuss this question under three subdivisions, which will be followed in this argument in substantially the form indicated, but in the following order:

*I. Was there a valid exemption for the term of five years from the time the lands were conveyed by patent from the state to the railroad company?*

*II. Did chapter 111 of the laws of 1873, known as the Taylors Falls Act, and the acceptance thereof by the Duluth & Iron Range Railroad Company constitute a contract which the state is inhibited from impairing?*

*III. Did the Constitution of 1858 prohibit the state from contracting for a perpetual system of gross earnings tax in lieu of other taxation?*

I.

**Was an irrevocable exemption created for the term of five years from the time the lands were conveyed by patent**

**from the state to the railroad company by the proviso contained in section 2 of chapter 54 of the Special Laws of 1875?**

It is not denied that under the authority of *Mills County vs. Railroad Company*, 107 U. S. 557, and *Morrison County vs. St. P. & N. P. R. R. Co.*, 42 Minn. 551, the state has power, in its discretion, to dispose of lands granted to it by Congress by what is known as the swamp land grant of March 12, 1860. On the other hand, it is urged that the proposition is equally well settled that an act of the legislature of a state exempting property of a railroad company from taxation, whether such exemption forms a part of the original grant or is created by subsequent enactment, is not, when a mere gratuity on the part of the state, a contract to continue such exemption, but is always subject to modification and repeal in like manner as other legislation.

*Tucker vs Ferguson*, 22 Wal. 527.
*West Wisconsin Ry. Co. vs. Board of Supervisors of Trempeleau Co.*, 93 U. S. 595.

Under the authority of the latter case, it is insisted this question presented by counsel is foreclosed.

The Court had under consideration a portion of section 1 of chapter 324 of the General Laws of Wisconsin for the year 1864, which provided in explicit terms that the lands in question, the title of which became vested in the railroad company receiving such grant, should be exempted

from taxation for ten years from the passage of the act. The Tomah & Lake St. Croix Railroad Company was organized by chapter 243 of the Spec. Laws of Wisconsin of 1863, and thereby received title to the lands in question. The exemption referred to was thereafter created by chapter 324, and the lands were earned and acquired by the railroad company. Still later, but prior to the termination of the exemption period, by an act of the legislature of Wisconsin of March 15, 1871, it was enacted that certain lands in Trempeleau County, being part of the lands so granted, "shall be liable for taxation the same as other real estate." This Court in holding that the exemption from taxation created by the act of 1864 was subject to modification and repeal, referring to the decision in *Tucker vs. Ferguson, supra,* say:

> "It is unnecessary to reproduce at length the views then expressed. In that case, 22 Wall. 575, we said:
>
> " 'The taxing power is vital to the functions of government. It helps to sustain the social compact, and to give it efficacy. It is intended to promote the general welfare. It reaches the interests of every member of the community. It may be restrained by contract in special cases for the public good, where such contracts are not forbidden. But the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists, it is to be rigidly scrutinized, and never per-

mitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. It is in derogation of public right, and narrows a trust created for the good of all.'

"We hold here, as we held there, that the exemptions in question were gratuities offered by the state, without any element of a contract. There was no assurance or intimation that they were intended to be irrevocable, or that the laws in question should not be at all times subject to modification or repeal in like manner as other legislation. If a different intent had existed, it would doubtless have been clearly manifested by the language employed. It would not have been left to encounter the possible results of such a struggle and conflict as have occurred in this litigation."

The exemption from taxation involved in *West Wisconsin Ry. Co. v. Board of Supervisors of Trempeleau Co., supra*, is identical with the exemption admitted to be created by chapter 54 of the Spec. Laws of 1875, as amended by chapter 87 of the Spec. Laws of 1885, except as to the term of years, and except also that neither of the Minnesota enactments organized the defendant company. The Duluth & Iron Range Railroad Company was a corporation organized under the laws of the State of Minnesota prior to March 9, 1875, the date of the former enactment. (Record Fol. 105). Chapter 54 as originally passed, or as amended, (Appendix A) did not in the remotest degree, purport to be a contract be-

tween the State of Minnesota and the Duluth & Iron Range Railroad Company, but on the other hand a casual examination of the acts will show that the grant thereby made and the exemption therein created, were mere gratuities and subject to withdrawal by the state under the authority of the decision last cited.

These suggestions are made upon the assumption that the state had power to create, until revoked, an exemption from taxation; but it is urged in this connection that under the terms of sections 1 and 3 of Article IX of the State Constitution, such power did not exist, and that the clause of the enactment providing for such exemption was unconstitutional and void. Attention is particularly called to the fact that neither chapter 54 of the laws of 1875, or the act as amended in 1885,attempted to provide a substituted system of taxation for the railroad properties or the lands so granted to the plaintiff in error. Therefore, the clause in question must be treated as providing an exemption from taxation of such lands, in the face of the Constitution, which not only provides for equality of taxation but that all property should be taxed at its full value in money.

II.

**Did chapter 111 of the Special Laws of 1873, known as the Taylors Falls Act, and the acceptance thereof by the Duluth & Iron Range Railroad Company, con-**

**stitute a contract which the state is inhibited from impairing.**

The rule is elementary that in states whose Constitutions provide that corporations may be formed under general laws and that laws passed pursuant to such provisions may from time to time be altered and repealed, the powers of corporations so created are subject to amendment or modification by the legislature.

*Spring Valley Waterworks vs. Schottler, et al.*, 110 U. S. 347.
*Shields vs. Ohio*, 95 U. S. 319.

The reservation is equally valid and effective, whether it exists in the Constitution of the state or *in a prior general law.*

*Miller vs. State*, 15 Wal. 478.
*Holyoke Water Power Co. vs. Lyman*, 15 Wal. 500.

A provision in a charter that it *shall not be altered in any other manner than by an act* of the legislature, *is equivalent to an express reservation* to make any alterations by such act as the legislature may deem expedient.

*Penn. College Cases*, 13 Wal. 190.

In 1871 the people of the State of Minnesota adopted an amendment to their Constitution, in form as follows:

"Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad company now existing in this state or operating its railroad therein, or which may be hereafter organized, shall, in lieu of all other taxes and assessments upon their real estate, roads, rolling stock and other personal property, at and during the time and periods therein specified, pay into the treasury of this state a certain per centum therein mentioned of the gross earnings of the railroad companies now existing, or hereafter organized, shall, before the same shall take effect and be in force, be submitted to a vote of the people of the state, and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them."

*Const. Minn*, Art. IV, Sec. 32a.

It will be noticed the pretended contract relied upon by the Duluth & Iron Range Railroad Company, plaintiff in error, as creating or providing a fixed and permanent measure of taxation upon its railroad properties, including lands, was an acceptance by such railroad company of chapter 111 of the Spec. Laws of 1873. Chapter 111, which forms the basis of this alleged contract, was passed by the legislature of Minnesota two years subsequent to the Constitutional amendment referred to.

It will be hereafter urged that this enactment is not so definite and explicit in its terms as to create a perpetual system of taxation, and also that the express provisions of the Constitution contained in Sections 1 and

3 of Article IX thereof, when read independently of the amendment of 1871, are limitations upon the power of the legislature to provide for a method of taxing all property in this state, other than upon an assessment basis that may be modified to meet the rule of uniformity therein prescribed.

On the other hand, it is urgently insisted that under the rule established by this court in the *Pennsylvania College Cases*, above noted, the amendment to the Minnesota Constitution adopted in 1871 must be deemed to have authorized the amendment or modification of chapter 111 of the laws of 1873, or any "contract" predicated thereon.

In the *Pennsylvania College Cases, supra*, it appeared the legislature of Pennsylvania in 1802 chartered a college at Canonsburg by the name of the Jefferson College, giving to it a constitution and declaring that the same should "*be and remain the inviolable constitution of the said college forever*," and should not be "*altered or alterable by any ordinance or law of the said trustees or in any other manner than by an act of the legislature of Pennsylvania.*"

It was urged upon the argument that the words quoted did not amount to a reservation of the right of the legislature to amend such charter. In disposing of this objection, the Court at Page 221 say:

> "Even suppose that the consent of the corporation is no answer to the objections of the complainants, still the decree of the State Court must be affirmed, as it is clear that the

reservation in the charter fully warranted the legislature in passing both the acts which are the subject of complaint. *People vs. Manhattan Co.*, 9 Wendell 351; *Roxbury vs. R. R. Co.*, 6 Cushing 424; *White vs. Railroad*, 14 Barbour 559.

"*Suggestion may be made that the reservation even in the original charter is not expressed in direct terms*, but the terms are the same as those employed in the charter which was the subject of judicial examination in the case of *Commonwealth vs. Bonsall et al.*, 3 Wharton 566, which was decided more than thirty years ago by the Supreme Court of the state. Provision was made in the charter in that case that the constitution of a certain public school *should not be altered or alterable by any law of the trustees, or in any other manner than by an act of the legislature of this state.* When incorporated the charter of the school provided that the trustees should be chosen by such persons as had contributed or should contribute to the amount of forty shillings for the purposes of the corporation. Pursuant to the petition of the trustees the legislature passed an act which repealed that clause of the charter, and provided that all the citizens residing within the limits of the township should be entitled to vote at all such elections, and the Supreme Court of the State held unanimously that the act of assembly was a valid act, even though it was not accepted by the corporation. Reference is made to that case to show that the clause in the charter of Jefferson College, called the reservation, furnished complete authority to alter, modify or amend the charter, and certainly it must be conceded that that

case is a decisive authority to that point. *State vs. Miller*, 2 Vroom 521; *Story vs. Jersey City et al.*, 1 C. E. Green, N. J. 13.

"Controlled by these reasons the Court is of the opinion that the act uniting the two colleges in one corporation was a valid act even as against the complainants in the third case."

The authority of this case has never been questioned; but on the other hand the holding has been referred to approvingly by this Court.

We therefore suggest that the right of the legislature to amend a charter contract of any nature, where the Constitution of the state prohibits an amendment *in any other manner than by legislative enactment*, the right to so alter or amend must be deemed to exist.

See also *Commonwealth vs. Bonsal*, 3rd Whart. 566.

Omitting the subject matter of the issue directly in question, embodied in the clause of the amendment to the Constitution of Minnesota adopted in 1871 and in force at the time of the passage of Chapter 111 of the Special Laws of 1873, which forms the basis of the alleged contract, such amendment reads:

"Any law providing for the repeal or amendment of any law or laws *heretofore or hereafter enacted*, which provides that any railroad company now existing in this state or operating, its railroad therein, or which may be hereafter

> organized, shall * * * * * before the same shall take effect and be in force, be submitted to a vote of the people of the state and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them."
>
> *Constitution, Minn.*, Art. IV, Sec. 32a.

Pursuant to this amendment, Chapter 168, of the laws of 1895 was passed by the legislature, and by it submitted to a vote of the people of the state and adopted and ratified by a majority of the electors of the state voting at the general election held in 1896. This enactment did not purport to amend existing legislation fixing the amount of the tax to be paid by railroads upon the railroad right of way, rolling stock and necessary terminals, but it did provide for the taxation in the ordinary manner of assessment of all other lands owned by such railroads, including lands granted by the state. We insist that the conclusion of the Supreme Court of Minnesota that an inviolable contract did not exist involving the subject of taxation between the State of Minnesota and plaintiff in error, gives to the constitutional amendment of 1871, the only reasonable interpretation that can be suggested.

> See *Record*, Fol. 125; also *State ex rel. Marr vs. Stearns*, 72 Minn. 200.

It has been repeatedly asserted by counsel for plaintiff in error, that the present holding of the Supreme Court of Minnesota is inconsistent with the early decisions, and that the established policy

of the state is sought to be changed. This we deny. Since the adoption of the amendment to the Constitution in 1871 the Supreme Court has invariably, when the question has been presented, treated the amendment as not only validating prior state enactments, but as authorizing an amendment or repeal of all acts, either past or future, involving the subject of a gross earnings tax upon railroad properties.

*City of St. Paul vs. St. Paul & Sioux City Rd. Co.*, 23 Minn. 469.
*County of Stevens vs. St. Paul, Minneapolis & M. Ry. Co.*, 36 Minn. 467.
*State vs. Luther*, 56 Minn. 164.
*State vs. Stearns*, 72 Minn. 200.

In 1877 in *City of St. Paul vs. St. P. & S. C. R. R. Co.*, at Page 475, the Court uses the following significant language:

> "This modification of the original contract was prohibited by no provision of the constitution; and the enactment of March 4, 1864, in this regard, has not only been uniformly recognized and acted upon ever since, as valid, by both the executive and legislative departments of the state government, but, by an express constitutional amendment, adopted in 1871, it has been placed beyond the reach of any amendment or repeal, except by a law ratified by a vote of the electors of the state"

In *State vs. Luther, supra*, at Page 164, the Court say:

> "This language must have been selected and this amendment adopted with reference to the existing legislation and the general legislative policy to which we have referred; and, read and construed in that light, it amounts to a clear recognition of the validity of existing laws providing for this commuted system of taxation of railroad property and lands, and of *legislative power to enact such laws for the future*. If it did not refer to this, there was nothing to which it could refer. It is, by necessary implication, a validation of past legislation of that kind, and a grant of power to enact it in the future. It is pretty clearly indicated in *City of St. Paul vs. St. Paul & S. C. R. Co.*, 23 Minn. 469, and *County of Stevens vs. St. Paul, M. & M. Ry. Co.*, 36 Minn. 472, that this was the view then entertained by the court."

An *obiter* remark in this decision has frequently been referred to as indicating the opinion of the Court that acts passed prior to 1871 providing for a commuted system of taxing railroad property, were not subject to amendment or repeal. To combat such inference, I beg to call attention to the decision of the Court therein upon re-argument; which reads in full as follows:

> "But inasmuch as an *obiter* remark in the opinion might be understood to mean that acts providing for a commuted system of taxing railroad property and granted lands constitute contracts between the state and the railway companies which cannot be repealed or amended, it is proper to say that no such question

was before the court, and that the remark referred to was not intended to express or intimate any opinion on that point."

It has been the uniform rule of this court never to depart from the construction of a State Constitution adopted by its highest judicial authority, unless such construction is *manifestly unsound*.

*Railroad Co. vs. Gaines*, 97 U. S. 697;
*Burgiss vs. Seligman*, 107 U. S. 32;
*Flash vs. Connecticut*, 109 U. S. 371.

The construction given to the constitutional amendment of 1871, in the case at bar as well as in prior decisions of the Supreme Court of Minnesota, having been adopted by this court in the *Pennsylvania College Cases*, *supra*, where the precise question from a standpoint of principle was involved, it is suggested the question should be treated as foreclosed.

It, therefore, follows that the right to amend or repeal Chapter III of the Laws of 1873 must be deemed to have been reserved.

III.

**Did the Constitution of 1878 prohibit the State from contracting for a perpetual system or fixed amount of gross earnings taxes in lieu of other taxation.**

A.

So far as the issues involved in this case are concerned, it is insisted that it is immaterial whether

Sections 1 and 3 of Article 9 of the Constitution of Minnesota adopted in 1858, operated to prohibit the legislature from contracting for a perpetual system and fixed amount of gross earnings taxation upon railroad properties, for the reason that the amendment to the Constitution adopted in 1871, not only in language which cannot be misunderstood, but as interpreted by a uniform line of decisions in the court of last resort in Minnesota, provides a method of amending the gross earnings system and any measure of taxation based thereon which was thereafter adopted. It will be noted the pretended contract relied upon by plaintiff in error was predicted upon the acceptance of Chapter 111 of the Special Laws of 1873 at a time long subsequent to the adoption of the amendment of 1871.

As we have endeavored to show, the construction of the Supreme Court of the language of this provisions, has met the approval of this court in construing clauses of the Pennsylvania statutes of an identical nature.

*Penn. College Cases*, 13 Wall. 190.

In view of the fact that the precise question involved in the above subdivision is now before this Court, and the views of counsel representing the state have been more elaborately presented in the supplemental brief therein filed, I beg to call the attention of the Court to our argument in the case of *Stearns vs. State of Minnesota*, and shall further refrain from trespassing upon the time of the court other than briefly.

Sections 1 and 3 of Article 9 of the Minnesota Constitution read as follows:

> "Section 1. All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state. * * *"
>
> "Section 3. Laws shall be passed taxing all moneys, credits, investments and bonds, stocks, joint stock companies or otherwise, and also all real and personal property according to its true value in money.

Counsel for plaintiff-in-error on Page 16 of their brief, for the purpose of showing, as they state, "the legislative, executive and judicial interpretation of the Constitution and the uniform policy of the state as to taxation of railroads," give a synopsis of what purports to be each separate railroad charter or grant of commuted taxation since the organization of the territory.

Following is a complete list of the grants referred to:

1. Minnesota & Pacific Railroad Company and its successor railroad corporations, originally created by Chapter 1 of the Spec. Laws of 1857.

2. Root River Valley & Southern Minnesota Railroad Co., organized by Chapter 24 of the laws of 1855. The franchises of this company were subsequently transferred to the Chicago, Milwaukee & St. Paul Railroad Company.

3. St. Paul & Sioux City Railroad Company, now the Chicago, St. Paul, Minneapolis & Omaha

Railway Company, this being a branch of the Root River organized by special act of the legislature in 1855.

4. St. Paul & Duluth Railroad Company, first incorporated under the name of the Nebraska & Lake Superior Railroad Company by Chapter 93 of the Spec. Laws of 1857. It was partially reorganized and its name changed to Lake Superior and Mississippi Railroad Company by Chapter 1 of the Spec. Laws of 1861.

5. Hastings & Dakota Railroad Company, formerly the Hastings, Minnesota River and Red River of the North Railroad Company, was incorporated February 20, 1857, by special act of the legislature of the Territory of Minnesota.

6. Western Railroad Company of Minnesota, was by Chapter 201 of the Laws of 1877, granted part of the original franchise of the St. Paul & Pacific Railroad Company.

7. The Minnesota and Northwestern Railroad Company, now the Chicago Great Western Railroad Company, and the Winona and St. Peter Railroad Company, now a part of the northwestern system referred to by counsel, were organized respectively in 1854 and 1855.

The latter received a grant of lands and certain exemptions pursuant to the provisions of Sub-chapter 2 of Chapter 1 of the Laws of 1857.

It will be noticed that not one of the railroad charters to which attention is called by counsel for the purpose of showing the construction given by the administrative and judicial officers of the *State*,

was granted after the adoption of the Constitution, and speaking generally, it may be asserted that in the discussions which followed in the courts in the reported cases cited, the question of territorial grants and exemptions alone were involved, except in some few particulars, in which the franchises or exemptions granted by the Territory were re-transfered in 1864 or 1865 by the legislature of this state at the direct instance and request of the different railroad companies, who received direct benefits therefrom.

It can also be asserted that after the adoption of the Constitution, the legislature, in 1865, amended and lessened the measure of taxation imposed by the territorial legislature upon railroad companies. The right to do so was assented to by such companies and never questioned in the courts by them. *The bare fact that the legislature of the state at the instance of the railroad companies did, in 1865, amend and lessen the rate of taxation upon railroad properties, implies that the legislature at that date assumed it had the power to modify such charters.* The most that can be urged upon the question of the legislative construction of that period is, that the legislature refrained from exercising the power to raise the rate of taxation which in different instances it assumed to possess in enactments lowering such rate.

The learned counsel strenuously insist that the administrative officers of the state in its early history never questioned the right of the state to enter into perpetual and irrevocable contracts involving

the gross earnings system of taxation after the adoption of the Constitution. The accuracy of this assertion is challenged.

The first time the question was presented to the Supreme Court of Minnesota involving the subject of territorial franchises or exemptioned occurred in 1869, in the leading case of *1st Div. St. Paul & Pac. R. R. Co. vs. Parcher*, 14 Minn. 297.

This case involved a territorial grant and certain franchises which had been reinvested in the state under foreclosure proceedings occasioned by the insolvency of the original railroad company. The court therein held, under the authority of *New Jersey vs. Wilson*, 7 Cranch 164, that the *Territory* had the power to enter into an irrevocable contract involving the subject of taxation; that the same was a privilege which became reinvested in the state not in its sovereign but in its individual capacity, and which the state by its legislature had the right to reconvey and reinvest in another corporation.

It is true that neither Sections 1 or 3 of Article 9 of the State Constitution are referred to in the decision of the court in the *Parcher case*. From the conclusions reached, the same would have been out of place. But that this provision was in the mind of the court at the time of the decision is made apparent by a statement of the same court in its decision rendered January 11, 1875, in *State vs. Winona & St. Peter R. R. Co.*, 21 Minn. 317, where the question was directly raised. The court referring to the Parcher case say:

"It is true that this constitutional provision does not appear to be considered in the opinion of this Court in the case referred to; but the consideration and disposition of the point made upon it is involved in what was said on Pages 328-331 of the published opinion."

The general question involving the power of the legislature to provide this system of gross earnings taxation was next brought to the attention of the Court in January, 1875, in the case last cited. The issue was precisely the same as the one presented in the Parcher case. It appeared the Transit Company had been granted special exemptions or franchises, (the words were therein used indiscriminately) in connection with the grant of lands.

Under what is known as the five million dollar loan amendment to the Constitution, the state had made a loan to this company or its successors, and to secure the same taken back a mortgage upon the lands so granted, which mortgage in terms included the franchises or exemptions referred to. This mortgage had been foreclosed and the interest theretofore granted by the territory purchased by the state and re-granted by Chapter 19 of the Spec. Laws of 1862 to the defendant, the Winona & St. Peter Railroad Company, the history of which transaction may be found in *Hough vs. Winona & St. Peter R. R. Co.*, 11 Minn. 180. Upon the argument of the issues involved, George P. Wilson, then attorney general of the state, assailed the transfer referred to, made after the adoption of the Constitution, upon the ex-

press ground that the act of 1862, which was called by the court a transfer of the prior franchises, was void, in this, that it provided for a gross earnings system of taxation, and that such system was in violation of Section 3 of Article 9 of the State Constitution, providing that "laws shall be passed taxing * * * all real and personal property at its true value in money." The court in avoiding the force of the argument of the attorney general expressly held, following the *1st Div. of St. Paul & Pac. vs. Parcher, supra*, that the Constitution of Minnesota did not apply to the transaction at all and must be disregarded; that the grant to the original transit company was made by the Territory of Minnesota before the adoption of the Constitution; that the interests of this company, including its franchises, became reinvested in the state by foreclosure proceedings under the loan authorized by what is called the five million dollar loan amendment to the Constitution; that the state received the same not in its sovereign, but in its individual capacity, and that by the act of 1862, a transfer of the original franchises was made, which by implication was authorized by the amendment to the Constitution referred to, and that this transfer could not be considered a grant or regrant of exemptions, privileges or franchises by the state in its sovereign capacity. With regard to the logic of this argument, nothing need be said. We only bring it to the attention of the Court to show that the administrative officers of the state then raised the objections which are now presented, and that the court avoided a de-

termination of the question, and by implication reached a contrary conclusion from the one which would have been reached had the Constitution been deemed to have applied, upon the express ground that the limitations of the Constitution did not apply to the transaction.

See *State vs. Winona & St. Peter R. R. Co.*, 21 Minn. Pages 317-18, where the Court say:

> "It is, however, contended by the attorney general that, in the case against Parcher, this Court was not called upon to consider, and did not pass upon the question raised by the constitutional requirement 'that laws shall be passed taxing * * * all real and personal property at its true value in money,' and further that this constitutional provision in effect prohibited and rendered void the transfer, by a law passed after the adoption of the Constitution, of the immunity from taxation which was originally conferred upon the Transit Company, and which is now claimed by the Winona & St. Peter Company, as its successor. It is true that this constitutional provision does not appear to be considered in the opinion of this Court in the case referred to. But the consideration and disposition of the point made upon it, is involved in what is said, (on Pages 328, 331 of the published opinion,) to the effect that it is by *virtue of the amendment to the Constitution* that this immunity from taxation, (whether it be regarded as a franchise, or as a right appendant to the lands to which it related,) was permitted to be made the subject of the mortgage and forfeiture to the state, and was therefore transferable to the purchaser at

the mortgage sale, or to the state under a forfeiture, and also by what is further said in the opinion in reference to the right of the state to hold and transfer whatever it acquired as purchaser at the foreclosure sale, or by virtue of the forfeiture, as property, as a private person might hold and transfer the same, without merger or extinguishment of any of the franchises, rights or immunities possessed by the mortgagors and which had become the subject of mortgage or forfeiture, under the provisions of the constitutional amendment. In other words, the constitutional amendment, popularly known as the Five Million Loan Amendment, is *controlling* in reference to its subject. It is not a mere act of the legislature, but a part of the organic and fundamental law, of equal authority, *per se*, with any other part of the Constitution. Being a particular provision, with reference to a particular subject-matter, it is, within its own sphere, so far as that subject-matter is concerned, paramount and supreme. And it follows that its effect, in permitting the state, by the foreclosure or forfeiture, to acquire, hold and transfer the immunity from taxation, according to the doctrine of the Parcher case, is not controlled or overriden by the general constitutional provision in regard to taxation before quoted. In reference to the case of *Trask vs. Maguire*, 18 Wall. 391, we think it may be distinguished in some important respects from the case at bar; but if it be in point, we should not deem it to be our duty to recede from or overrule the views expressed in the Parcher case, upon its authority."

It therefore cannot be correctly assumed that

either the administrative officers of the state or the Supreme Court in the early history of the state had in mind that the power existed in the legislature, after the adoption of the Constitution, to either provide for this system of taxation or enter into perpetual contracts involving the subject of railroad taxation. From the language of the Court referred to in the *Winona & St. Peter case*, it is clear that in 1869 this question was disregarded for the reason that another constitutional provision (expunged from the Constitution of Minnesota in 1860, *but which specifically applied to that transaction*) controlled. And we find that for some reason the constitutional amendment which placed the matter at rest was adopted in 1871.

This amendment so frequently quoted, purports upon its face to be not only an attempt to validate prior legislation providing for this system of taxation, but also to authorize a continuation of the plan. By the express terms thereof, the legislature by presenting, and the people of the state by adopting it, further provided that the method and measure of taxation then in force should not be changed except by an act of the legislature approved by a majority of the electors of the state, voting at the next general election.

*Article 4, Section 32a.*

The question involving an amended territorial grant was again before the Court in 1877 in *City of St. Paul vs. St. Paul & Sioux City R. R. Co.*, 23

Minn. 469. The Court in its decision at Page 474, use the following significant language:

> "There is no force in the suggestion that the legislature had no constitutional power to enact this amendment, because of the limitations upon the taxing power imposed by Sections 1 and 3 of Article 9 of the Constitution. The line of railroad in question, together with the lands, property, immunities, and franchises pertaining thereto, is held under a grant made prior to the adoption of the Constitution, and is hence unaffected by any of its provisions relating to the taxing power, and the mode in which it shall be exercised. This was fully settled by this Court in the analogous case of *First Div. St. Paul & Pacific R. Co. vs. Parcher*, 14 Minn. 297. Upon the renewal of the grant, in 1864, to the present company, it was therefore clearly competent for the legislature to change and modify its terms and conditions so as to require the annual payment of a different rate per cent. of the gross earnings of the road. * * *
>
> "This modification of the *original contract* was prohibited by no provision of the Constitution; and the enactment of March 14, 1864, in this regard, has not only been uniformly recognized and acted upon ever since, as valid, by both the executive and legislative departments of the state government, but, *by an express constitutional amendment, adopted in 1871, it has been placed beyond the reach of amendment or repeal, except by a law ratified by a vote of the electors of the state.*"

Thus early in the state's history, the Court determined two propositions: 1st. That the limitations contained in Article 9 of the Constitution did not apply to territorial grants and immunities as amended by the enactments of the legislature of the state then before the Court; and 2nd, that the amendment of 1871 authorized an amendment to the contract rate of taxation in the manner above indicated.

That this has been the consistent view of the Supreme Court of Minnesota in all cases calling for an expression of an opinion upon the point, see

*County of Stevens vs. St. Paul, M. & M. R. R. Co.*, 36 Minn. 572;
*State vs. Luther*, 56 Minn. 164;
*State vs. Stearns*, 72 Minn. 200.

A commuted system of taxation of mining properties by the payment of a tonnage tax, although in force for many years, was held to offend Article IX of the Constitution in *State vs. Lakeside Land Co.*, 71 Minn. 283.

Inasmuch, therefore, as the courts and administrative officers of the state in its early history, dealt only with *territorial* exemptions or franchises, and frequently from time to time protested against the proposition that the *state* had the power prior to 1871 to provide a substituted or irrevocable measure of railroad taxation, it is insisted the argument of the learned counsel upon the question of an administrative construction of the Constitution of Minnesota falls of its own weight.

However, the strongest authority cited bearing upon the general question is, *City of Faribault vs. Misenen*, 20 Minn. 396.

An examination of this case discloses the fact that the City of Faribault in assessing a poll tax against certain *classes* of its citizens pursuant to general legislative authority, was charged with violating the rule of uniformity prescribed by Sec. 1 of Article IX of the Constitution. The Court expressly held that Section 3 of the article providing that "*laws shall be passed taxing all * * * property at its true value in money*," did not apply.

The essence of the decision was barely to the effect that in view of long continued acquiescence of the people the legislature was authorized to classify the citizens of Faribault in making an assessment by the poll, so as to exempt firemen from its burdens. It is important to note the Court did not have before it the further question as to whether the *measure of taxation adopted as to certain classes of individuals, was irrevocable.*

It is suggested that the authority of *Knowlton vs. Moore*, 20 Supreme Court Sup. Report, 747, relied upon by counsel in the historical argument presented, is not instructive as bearing upon the question of property taxation. By an unbroken line of adjudications in state courts and upon review in this Court, the rule is settled that state enactments involving inheritance tax laws so-called; 1st. Impose a tax upon the privilege of receiving property by inheritance or device and not upon the property itself; 2nd. That the right to take property by de-

vise or descent, is the creature of the law and not a natural right; 3rd. That the usual limitation requiring uniformity in imposing taxes *upon property* does not apply to such enactments.

*Magoun vs. Ill. Trust & Savings Bank*, 170 U. S. 293;
*Mager vs. Grime*, 8 How. (U. S.) 490;
*Dos Passos on Inheritance Tax Law*, Par. 8, P. 20;
*Eyre vs. Jacob*, 14 Grat. (Va.) 422;
*Kochesperger vs. Drake*, 167 Ill. 122;
*In Re Wilmerding*, 117 Cal. 281;
*Gellsthorp vs. Furnell*, 20 Mont. 299;
*In Re Tax of Hoffman*, 143 N. Y. 327;
*In Re Bronson*, 150 N. Y. 1;
*Wallace vs. Myers*, 38 Fed. Rep. 184;
*Minot vs. Winthrop*, 162 Mass. 113;
*State vs. Hamline*, 87 Me. 495;
*Strode vs. Commonwealth*, 52 Pa. St. 183;
*Clyme vs. Commonwealth*, 52 Pa. St. 189;
*Com. vs. Herman*, 16 Wkly. Notes, (N. C.) 210;
*State vs. Dalrymple*, 70 Md. 294;
*Tyron vs. State*, 28 Md. 77.

*Knowlton vs. Moore*, following in part the logic of this rule barely held as to the war revenue act of Congress of June 1898; 1st. That the tax imposed was a duty or excise as distinguished from a tax on property, and therefore that Sec. 10 of Art. 1 of the Federal Constitution did not apply; 2nd. That the uniformity required by Sec. 9 of Art. 1 providing that imposts and excises shall be uniform throughout the United States is not an intrinsic uniformity,

relating to the inherent character of the tax, as respects its operations on individuals, but merely a geographical uniformity requiring the same plan and the same method to be operative throughout the United States.

B.

The conclusions adopted by this Court as originally constituted, involving the power of a state to create a prepetual exemption from taxation or to enter into an irrevocable contract involving the subject, may be summarized as follows:

1. In the absence of constitutional limitations, a state has authority to contract away the power of taxation.

> *State of New Jersey vs. Wilson*, 7 Cranch 164;
> *Farrington vs. Tennessee*, 95 U. S. 679;
> *Mobile & Ohio R. R. Co. vs. Tennessee*, 153 U. S. 486, and cases cited.

The two latter cases involved questions arising under the Constitution of Tennessee existing prior to the amendments thereto, adopted in 1870.

2. The rule was originally founded upon a *dicta* expressed in *New Jersey vs. Wilson*, *supra*, and has since been uniformly opposed by powerful dissenting opinions of a strong minority of the members of this Court.

> *Piqua vs. Koop*, 16 How. 369-392;
> *Washington University vs. Rouse*, 8 Wal. 439;

commented upon in *Ford vs. Delta & Pine Land Co.*, 164 U. S. 666.

3. The doctrine involving as it does the exercise of a power which is in derogation of sovereign authority and common right, will never be extended and any grant of exemption from taxation will be "rigidly scrutinized," and must be so clear, positive and explicit as to exclude all doubt as to the intention of the legislature.

*Vicksburg R. R. Co. vs. Dennis*, 116 U. S. 665;
*Tucker vs. Ferguson*, 22 Wal. 528;
*Bailey vs. McGuire*, 22 Wal. 217, and cases cited.

4. Under constitutional restrictions practically identical with Sections 1 and 3 of Article 9 of the Minnesota Constitution, the decisions of the courts of last resort of the state to the effect that such contracts are not irrevocable, have uniformly been sustained by this Court.

*Railroad Co. vs. Gaines*, 97 U. S. 697;
See
*Welch vs. Cook*, 97 U. S. 541.

5. This Court never held that a Territory had the authority to contract away its sovereign power so as to bind a future state.

6. The doctrine as an entirety has at all times been repugnant to the views early expressed by the state courts.

*Mott vs. Penn. R. R. Co.*, 30 Pa. St. 9;
*Merchants' & Traders' Bank vs. Diboll*, 1 Oh. St. 591;
*Toledo Bank vs. Bond*, 1 Oh. St. 622;
*Koop vs. Piqua Bank*, 1 Oh. St. 603.
*Brewster vs. Hough*, 10 N. H. 138;
*Brainerd vs. Colchester*, 31 Conn. 407;
*East Saginaw Salt Mnfg. Co. vs. East Saginaw*, 19 Mich. 259;
*West Wisconsin R. R. Co. vs. Board of Supervisors*, 35 Wis. 257;
*Raleigh & C. R. Co. vs. Reid*, 64 N. C. 155.

C.

**Under constitutional restrictions, practically identical with the limitations imposed by sections 1 and 3 of Article 9 of the Minnesota Constitution, this Court has repeatedly held the legislature was without authority to enter into irrevocable contracts involving the subject of taxation.**

The Constitution of Tennessee, Art. 2, Sec. 28, taking effect in 1870, unlike the Constitution of that state adopted in 1834, which controlled many prior and some subsequently reported decisions, contains the following clause, which for all practical purposes, is identical with sections 1 and 3 of Article 9 of the Minnesota Constitution, to-wit:

> "Property, real, personal and mixed, shall be taxed; but the legislature may except such as may be held by the state, by counties, cities or towns, and used exclusively for public and

> corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational. * * * All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct so the taxes shall be equal and uniform throughout the state. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

This provision of the Constitution of Tennessee came before the court for construction in *Railroad Co. v. Gaines*, 97 U. S. 697.

In 1875 the State of Tennessee enacted a railroad tax law, the 11th section of which provided that a railroad company, accepting that section as a special amendment to its charter and paying annually to the state 1½ per cent of its gross receipts, should be exempted from other provisions of the act and that such payment should be in full of all taxation.

A company, whose charter granted in 1846 (being subject to the constitution of 1834 then existing) exempted from taxation its capital stock forever and its road fixtures, etc., for a specific period, which expired March 28, 1877, accepted the provisions of that section and paid for 1875 and 1876, the required percentage. That section having been declared by the Supreme Cout of the state to be unconstitutional, it was repealed by amendment passed in 1877, which required such companies as had accepted and complied with its provisions, to

be assessed anew under other sections of the act of 1875, credit to be given for taxes paid by them and any excess in amount to be refunded. In an action by the company to restrain the assessment and collection of the tax provided for by the act of 1877, this court held, that the constitution of 1870, as construed by the highest judicial authority in the state, required all property to be uniformly taxed, and hence the legislature could not in 1875, bind the state not to tax the company otherwise than as that section provides, upon the surrender by the company of its charter exemptions. In other words, that in view of the constitutional clause above set forth, the State of Tennessee was inhibited from entering into any contract involving the subject of taxation, which was not thereafter the subject of amendment or repeal. The court expressly held that the act passed in 1877 amending the unconstitutional legislative enactment of 1875, so far as it subjected the property to taxation after March 28, 1877, did not impair the obligation of a contract. This court in affirming the decision of the Supreme Court of Tennessee, at page 708, say:

> "Without pursuing this subject further, it is sufficient to say that we are clearly of the opinion that the road, with all its fixtures, etc., was taxable under the original charter after March 28, 1877, and that, whatever else was exempted as capital stock, this was not.
>
> "2. As to the effect of the acceptance of the eleventh section of the act of 1875, and the payment of taxes thereunder for the years 1875 and 1876.

"The claim on the part of the company is, that by the acceptance of this section as an amendment to its charter, a valid contract was entered into between the state and the corporation, regulating the taxation of the company until the year 1885. It is said that the release by the company of the perpetual exemption of its capital stock, and of the exemption of its property until 1877, which were granted by the original charter, was a sufficient consideration for an agreement, on the part of the state, not to tax the company otherwise than according to the accepted eleventh section for ten years, and that a law which provides for taxation in a different manner impairs the obligation of that contract.

"The decision of the Supreme Court of the state declaring this section to be invalid, so far as it relates to companies not claiming to be exempt from taxation under their charters, because it does not conform to the constitutional requirement of uniformity, is binding upon us as a construction of a state statute by the highest court of the state. While we are not bound by the decision in the present case, that the section is also invalid as to this company after the expiration of the time to which the exemption of its property was limited by its charter (*Jefferson Branch Bank vs. Skelly*, 1 Black. 436; *Bridge Proprietors vs. Hoboken Company*, 1 Wall. 116), the decision ought not to be overruled, unless the error is manifest.

"The Constitution of Tennessee adopted in 1870 requires that all property shall be taxed. After that constitution went into effect, no valid contract could be made with a corporation for an exemption from taxation. So the

courts of Tennessee have held, and in so doing have established a rule of decision for us. The property of this company was only exempt by its charter until March 28, 1877. The constitution did not and could not interfere with this exemption so long as it lasted. This the Supreme Court of the State decided. To that extent the claim of the company was sustained.

"If nothing had been done until the charter exemption expired, it is clear that, under the construction which the courts of the State have given the constitution, no contract for the taxation of the company according to the provisions of the eleventh section of the act of 1875 could have been sustained. The only question, therefore, which remains, is, whether in 1875 the legislature could contract for the surrender of the remaining charter exemptions by binding the state not to tax the company for ten years in any other manner than that provided for in section 11.

"The constitution has subjected all property in the state to the burden of uniform taxation according to its value. So the courts of the state have decided. The legislature has no power to contract for relief from this burden. It could not do it for a money consideration, and if not for that, clearly not for any other. This is one of the disabilities under which the people of the state have placed their government. But for it taxes might have been commuted or they might have been withheld.

"There is no doubt of the power of the legislature to contract with the company for a surrender of its charter exemptions in a way that did not involve a release from the constitutional mode of taxation after the charter ex-

emption had expired. Such a release is, however, as we think, prohibited by the constitution as construed by the highest judicial authority in the state."

Section 5 of Art. 16 of the Constitution of Arkansas provides:

"All property subject to taxation shall be taxed, according to its true value, that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, provided the general assembly shall have power from time to time to tax hawkers, peddlers, ferries, exhibitions and privileges in such manner as may be deemed proper. Provided further, that the following property shall be exempt from taxation: public property used exclusively for public purposes; churches, used as such; cemeteries used exclusively as such; school buildings and apparatus, libraries and grounds used exclusively for school purposes and buildings and grounds and materials used exclusively for public charity."

Sec. 6 of Art. 16 provides:

"All laws exempting property from taxation other than as provided in this constitution shall be void."

This provision of the Constitution of Arkansas is substantially identical with Sections 1 and 3 of

Article 9 of the Minnesota Constitution. The only noticeable difference is this: that the Constitution of Arkansas (section 6) provides: "All laws exempting property from taxation other than as provided in this constitution shall be void." On the other hand, Sec. 3 of Art. 9 of the Minnesota Constitution provides, that "*laws shall be passed* taxing all moneys * * *; also all real and personal property according to its true value in money."

Section 3, also exempted by name certain special properties, such as churches, public school buildings, etc.

In *State vs. Pioneer Savings & Loan Assn.*, 63 Minn, 80, the Supreme Court of Minnesota, having before it this provision, as well as Sec. 3 of Art. 9, say:

> "*But whatever the method adopted, the legislature cannot directly or indirectly, exempt any property from taxation, which the constitution does not so exempt.*"

It will therefore be noticed that the Constitution of Arkansas in express terms, and the Constitution of Minnesota as it existed before the amendment of 1871, as construed by the highest court in the state, were identical.

In *Huntington vs. Worthen*, 120 U. S. 97, this court had before it a statute of Arkansas which directed the board of railroad commissioners not to include the embankments, tunnels, cuts, ties,

trestles, or bridges of railroads in the schedule of property of railroad companies prepared by them for the purpose of taxation; and in deciding that such statute offended the clause of the constitution above set forth this court say, at page 101:

> "As thus seen, no part of the property of railroad companies in the state is exempt from taxation, and any law which exempts it is in express terms declared to be void. But laws which indirectly produce such exemption must be equally inoperative. That cannot be accomplished indirectly which the organic law declares shall not be done directly. *The assessment of property, that is, the appraisement and estimate of its value, is the basis upon which the amount of the tax is fixed.* A law, therefore, omitting from assessment portions of any particular property, thus lessening the estimate of its value, has the effect of exempting it to that extent from taxation. That result cannot be accomplished, as is well observed by the Supreme Court of the state, under the guise of regulating the duties of assessors."

It is obvious that the decision of the court is not predicated upon the force of the language declaring such law void, but upon that portion of the constitutional amendment referred to and in a general way reflected in the opinion of the court.

It is insisted that the decisions of this court in the above cases, and particularly in *Railroad Company vs. Gains*, affirming the decision of the court of last resort in Tennessee, when viewed in the light

of the rule of comity existing between the Federal and the state courts, are decisive of this case.

This court will not depart from the construction of a state constitution or statute by its highest judicial authority, unless such construction is manifestly unsound.

*Burgiss vs. Seligman*, 107 U. S. 32.
*Commercial Bank vs. Buckingham*, 5 How. 317.
*Flash vs. Conn*, 109 U. S. 371.
*Harperding vs. Dutch Church*, 16 Peters, 493.
*Ellendorf vs. Taylor*, 10 Wheat. 153.
*Railroad Co. vs. Gaines, supra.*
*Davie vs. Briggs*, 97 U. S. 628.

In *Burgiss vs. Seligman, supra*, the Court say:

> "A Federal court will lean toward an agreement of views with the state courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid any unseemly conflict with the well considered decisions of the state court."

In *Commercial Bank vs. Bond, supra*, the Court say:

> "It is the peculiar province and privilege of state courts to construe their own statutes;

and it is no part of the functions of this court to review their decisions or assume jurisdiction over them, under the pretense that their judgments have impaired the obligation of contracts."

In *Hlash vs. Connecticut, supra*, the Court say:

"We think this a case where the construction of the state court is entitled to great if not conclusive weight with us. It is the settled construction of a law of the state upon which the rights and liberties of a large number of its citizens must depend. * * * It is clear that confusion and uncertainty would result should the state and federal courts place different constructions on the sections."

It need not be urged that it is of vital consequence to the people of Minnesota that the great railroad corporations of the state shall stand upon an equal footing with the people of the state in the matter of taxation, and have no other or greater rights or privileges in the matter of sharing the public burdens than the public generally.

We do not question that the rule of uniformity in taxation may be more closely followed by adopting different methods as to different classes of property, or that this rule is not preserved by fixing a gross earnings tax upon telegraph and railroad properties, because of the difficulties incident to a correct appraisement thereof; but on the other hand, insist, that the fixing of an *unchangeable or irrevocable rate as to any class, in itself implies a*

*want of uniformity.* The fact that conditions are ever changing requires that the method and measure of taxation to be applied to any class shall always be subject to change, provided the rule of uniformity secured by the constitution is preserved.

If the power to fix an irrevocable measure or rate of taxation is held to have existed in the face of the rule prescribed by our constitution, then its exercise at any time, no matter how low the rate was fixed by the legislature, would have resulted in preserving, during the coming ages, to the owners of the class of property involved, the privilege of paying an infinitesimal proportionate share of the burdens of government at the expense of the less fortunate.

We insist that the fixing of an irrevocable definite amount, of itself implies a want of uniformity.

The offense, so far as Sec. 1 of Art. 9 is concerned, is not in the fixing of a definite rate, but rather in the assumption that *the rate so fixed is irrevocable.*

On the other hand, as we have seen, Sec. 5 of Art. 9 provides, that "laws shall be passed taxing all * * * property according to its true value in money."

Reading section one prescribing uniformity, in connection with section three providing that all property shall be *taxed at its true value in money,* we find in Minnesota not only that uniformity of taxation of property is required (which, as we urge, requires that any method established must be subject to modification to meet the changed condi-

tions); but also that a specified method of assessment was prescribed, which could not be legally violated, *i. e.*, that any plan must be on the basis of assessing all property at its true value. This excludes any other method of taxation, except upon a basis of value, not an income.

The determination by the courts of Minnesota in its early history, that the territory was a free lance in the matter of providing a method of taxation, certainly cannot be tortured into the doctrine contended for by counsel; and we respectfully submit that all *state* enactments, passed prior to the adoption of the constitutional amendment of 1871, were void until validated by that amendment, and also as has been urged before, that the amendment in question expressly provided for a repeal or modification of the acts so validated.

The property of the ordinary citizen of Minnesota is subject to annual re-assessment and also to modification by both local and state boards of equalization. Why should a special class be more favored?

Minnesota is a conservative state, so conservative in the matter of taxation, that the learned counsel in their brief in the comparative statement set forth (in the most fascinating manner), are driven to admit that railroad taxation is fixed at as low a rate as in the most favored state, and at a lower rate than in the average of states.

## IV.

Counsel at page 83 of their brief, furnish the court with data gathered from a statistical report of the Interstate Commerce Commission, as well as other sources, which tend to show that the amount of taxes paid by the railroads of Minnesota was but little less, proportionately than in sister states, and equal to the amount paid in some jurisdictions. We feel therefore at liberty to go outside the record and furnish the court further information upon this subject.

On January 28, 1899, the Board of Railroad and Warehouse Commissioners of Minnesota, made a report to a committee of the legislature then in session, showing the total percentage of stocks and bonds for Minnesota of all railroad companies doing business in this state on that date; also the total market value on that date, of stock and bonds for Minnesota of all such railroad companies.

| | |
|---|---|
| The face amount of such stocks and bonds is reported to be the sum of | $275,452,782.00 |
| While the market value thereof was stated to be | $289,122,841.00 |
| The amount of taxes paid upon railroad properties, appearing from this report for the year ending December 31, 1897, (being the last year for which statistics were then obtainable), was the sum of | $1,127,950.24 |

The percentage rate of taxation upon other property in Minnesota for the year 1897 was reported at 24 6/10 mills on the dollar.

See *Journal of the House* for 1899, Pages 217 and 221.

Assuming that the value of all the railroad properties in this state was the market value of their stocks and bonds on January 28, 1899, and estimating the amount of taxes due upon such property upon the basis of 24 6/10 mills assessed against other property, provided such properties were assessed at their true value in money, there would have been due from the railroads of Minnesota to the state for the year prior, the aggregate sum of.....$7,112,421.88

A recent report of the total amount of railroad taxes paid for the year 1898 shows the same to be the aggregate sum of.....$1,261,352.47

It may be asserted that while the constitution requires that all property shall be assessed at its true value in money, yet as a matter of fact in the practical execution of the laws of the state, the assessments are in truth fixed at a less amount. While

such assessments are always returned as representing actual value, still there is some truth in the suggestion.

As illustrating the assessments upon one class of property which may be be fairly taken as representating all classes, the State Board of Equalization, recently in session, whose duty it is to equalize all assessments throughout the state, adopted a resolution which for many years has heretofore been in force, equalizing the assessments of all banks throughout the state, on a basis of fifty per cent of the face value of their stock, plus the surplus.

Estimating the amount of railroad taxes upon this basis and taking for the purpose of the computation one-half of the total amount above noted, of the stocks and bonds of railroads outstanding January 28, 1899, such amount will produce at the average rate of taxation noted, the aggregate sum of.....$3,338,519.21

or nearly three times the amount of taxes paid by all the railroads of the state for the year 1897.

It thus clearly appears that the banks of the state, whose taxes are estimated at the usual rate of taxation upon an amount equal to fifty per cent of the face amount of their stock, pay nearly three times the proportionate amount of taxes actually paid by railroad companies upon their properties.

We beg to call the attention of the court to another branch of the report of the Railroad Commission referred to, found on page 222 of the *House Journal* for 1899. The Commission there report the proportionate earnings, taxes, taxes per mile, and percentage of taxes to earnings of all the leading railroads in Michigan, Iowa, New York, Massachusetts, Minnesota, Missouri, Kansas, Connecticut and Ohio.

This comparative statement was for the year 1895, from which it appears that the percentage of taxes to earnings amounted as follows:

| | | |
|---|---|---|
| Michigan | 2.538 | per cent. |
| Iowa | 3.788 | " " |
| New York | 7.401 | " " |
| Illinois | 5.435 | " " |
| Massachusetts | 8.517 | " " |
| Minnesota | 2.747 | " " |
| Missouri | 3.841 | " " |
| Kansas | 12.766 | " " |
| Connecticut | 5.195 | " " |
| Ohio | 3.517 | " " |

It is clearly deducible from the above that Minnesota has never been ungenerous or radical in dealing with the subject of railroad taxation.

V.

**The doctrine that a state can contract away so essential an attribute of sovereignty as the power of taxation, should be receded from.**

We have already, in the brief originally filed on behalf of the defendant in error, contended for the overthrow of the doctrine that a legislative body can barter away any of the indispensable sovereign powers of a state. It is not our purpose to now enlarge to any considerable extent upon what we have said in our former brief.

With great respect for the opinions of this Court, we deem it our duty to protest against the doctrine which concedes to a legislative body the constitutional right of depriving a state of the power of taxation. We do this with all the more freedom because of the numerous powerful dissenting opinions which have emanated from the members of this Court. The whole doctrine rests upon the unfortunate *obiter dictum* of Chief Justice Marshall in *State of New Jersey vs. Wilson*, 7 Cranch 164. As was long ago pointed out by Mr. Justice Catron, in *State Bank vs. Knoop*, 16 How. 369, in the dissenting opinion filed by him:

> "No question was raised in the Supreme Court of New Jersey, nor decided there or in this court, as to the constitutional question of one legislature having authority to deprive a succeeding one of sovereign power. The question

was not considered, nor does it seem to have been thought of in the State Court, or here."

No such question was before the Court in *Gordon's case*, 3 How, 144; see analysis of Mr. Justice Cution in *Piqua Bank Case*, 16 How. at page 400; and in *East Hartford v. East Hartford Bridge Co.*, 10 How. 535, the doctrine was denied in the following language:

"This case of *Goszler v. the Corporation of Georgetown*, (6 Wheat, 596, 598,) appears to settle the principle that a legislative body cannot part with its powers by any proceeding so as not to be able to continue the exercise of them. It can and should exercise them again and again, as often as the public interests require. * * * Its members are made by the people agents or trustees for them on this subject, and can possess no authority to sell or grant their powers nor the trust to others."

It was said further in the case last cited:

"The public character of all the parties to this grant, no less than its subject matter, seems, therefore, to show, that nothing in the nature of a contract with terms to be fulfilled or impaired like private stipulations, existed in this case so as to prevent subsequent interference with the matter by the legislature, as the public interests should appear to require."

We regard the doctrine as so obviously unsound, and in its tendency so destructive of government, that neither lapse of time nor repeated judi-

cial recognition of it would ever justify it. We believe that the weight of the argument in all the adjudications of this Court upon the subject has been with the dissenting justices. It was said by this Court in *Bailey v. McGuire*, 22 Wall. 217, that:

> "It were better for the interests of the community that this power (of taxation) should on no occasion be surrendered."

So late as 1873, and in the case of *Minot v. Phil. W. & B. Railroad Co.*, 18 Wall. 206, Mr. Justice Field took occasion to remark:

> "The power of taxation is an attribute of sovereignty, and is essential to every independent government. As this Court has said, the whole community is interested in retaining it undiminished, and has 'a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear.' *Bk. v. Billings*, 4 Pet. 561. If the point were not already adjudged, it would admit of grave consideration whether the legislature of a state can surrender this power and make its action in this respect binding upon its successors, any more than it can surrender its police power or its right to eminent domain."

In *Washington University vs. Rouse*, 8 Wall. 439, Mr. Justice Miller dissenting, being joined in his dissent by Chief Justice Chase and Mr. Justice Field, said:

"To hold, then, that any one of its annual legislatures can, by contract, deprive the state forever of the power of taxation, is to hold that they can destroy the government which they are appointed to serve, and that their action in that regard is strictly lawful. * * If the legislature can exempt in perpetuity, one piece of land, it can exempt all land. If it can exempt all land, it can exempt all other property. It can, as well, exempt persons as corporations. And no hinderance can be seen in the principle adopted by the court, to rich corporations, as railroads and express companies, or rich men making contracts with the legislatures, as they best may, and with such appliances as it is known they do use, for perpetual exemption from all burdens of supporting the government. * * * With as full respect for the authority of former decisions, as belongs, from teaching and habit, to judges trained in the common law system of jurisprudence, we think that there may be questions touching the powers of legislative bodies which can never be finally closed by the decisions of the Court, and that the one we have considered is of this character. We are strengthened in this view of the subject by the fact that a series of dissents from this doctrine by some of our predecessors, shows that it has never received the full assent of this Court; and referring to those dissents for more elaborate defense of our views, we content ourselves with thus renewing the protests against a doctrine which we think must be finally abandoned."

We respectfully submit that the logic of Mr. Justice Miller is unanswerable.

In the recent case of *Ford vs. Delta and Pine Land Co.*, 164 U. S. 666, this court, by Mr. Justice Brewer, took occasion to remark:

> "Indeed, there has been strong judicial dissent from the doctrine of the power of the state legislature to create a permanent exemption from taxation." Citing:
>
> *Washington University vs. Rouse, supra.*

That the state courts quite universally, before the determination of the case of *State of New Jersey vs. Wilson, supra*, had held that the state is without the power, in the absence of constitutional limitations, to contract away the right of taxation, and have since, in many jurisdictions, protested against the doctrine of the Federal cases, is illustrated in the following decisions:

*Mott vs. Penn. R. R. Co.*, 30 Pa. St. 9.
*Merchants & Traders Bank vs. Debolt*, 1 Oh. St. 591.
*Toledo Bank vs. Bond*, Id. 622.
*Knoop vs. Piqua Bank*, Id. 603.
*Brewster vs. Hough*, 10 N. H. 138.
*Brainerd vs. Colchester*, 31 Conn. 407.
*E. Saginaw Salt Mfg. Co. vs. E. Saginaw*, 19 Mich. 259.
*Raleigh, etc., R. R. Co. vs. Reid*, 64 N. C. 155.
*W. Wisconsin R. R. Co. v. Bd. Supervisors*, 35 Wis. 257.

Can there be any doubt that the doctrine is fraught with a danger to the public so great that

private interests should not be allowed to weigh against it?

Entertaining these views, we respectfully request a reconsideration of the question by the Court.

We may be pardoned for printing a few excerpts from well considered cases, determined in the state courts, expressing the views of such courts upon this important question, both prior and subsequent to the final establishment of the rule laid down in

*State of New Jersey vs. Wilson, supra.*

In *Mechanics & Traders Bank vs. Debolt, supra,* the Court say at Page 597:

> "Is this charter, then a contract on the part of the legislature? or is it a law? The legislative power of the state is vested in the General Assembly. This body is elected by the people, whose representatives they are, their business is to pass laws—prescribe rules of action; their powers are limited to the passage of laws, and to the fixing of rule necessary for their government, in the performance of their legislative duties, except in those cases, where, by express provision, duties other than legislative are conferred. The General Assembly have not general powers over the interests of community, either individually or collectively, except in the exercise of legislative powers. They have no right to create institutions, and fix rules for their government, except as legislators. They are clothed for the time being with the sovereignty of the state, to be exercised by them, without any power to barter

or sell it. They cannot abridge the legislative power of the state, so that their successors will not possess the same powers that they possessed. The legislative power to repeal a law, is co-extensive with the power to enact it."

And also at Page 601 use the following language:

"In 1851 the people of this state formed a new Constitution, one of its provisions requires that the property of the state shall be equally taxed as well that which belongs to corporations, such as this, as the property of individuals. That the people of this state once could have formed such a Constitution and carried it into effect, no one will doubt. But if the doctrine here contended for be true, the people of this state cannot carry their Constitution into effect, the sovereignty of the state has been in fact disposed of, sold out.

"It is said, however, that the authority of the legislature over the taxing power may be disposed of for a limited time. It can no more be disposed of for a limited time than it can be parted with forever; being one of the inherent sovereign powers of the state it is in no way the subject of barter or sale. Nor would it matter what bonus might be paid by a party obtaining such a contract, the sovereignty of the state cannot be computed in dollars and cents, it is above price. The sovereignty of government is an object held dear by all people; it should be especially so by a free people in whom it is vested. In the history of the world we have many instances of humanity exhibiting itself in a truly sublime attitude in defence of its sovereignty; few nations have been so degraded, that they would give up this inestimable

boon, without a struggle; very few have been willing to bargain it away, and it is truly humiliating that any portion of the people of this country should feel that the sovereignty of a state was the proper subject of barter and sale."

In *Mott vs. Pennsylvania R. R. Co., supra*, the Court at Pages 27 to 30, say:

"But has the Constitution conferred upon the legislature the authority to extinguish for ever, by bargain and sale, the power to raise revenue for the support of government? All free governments are established by the people for their benefit, and the powers delegated are to be exercised for their common good, and not, under any circumstances, to be sold or destroyed, so long as the nations establishing them have the physcal power to maintain their independence. Individuals cannot subsist without food. Deprive them of 'the means whereby' they live, and you destroy them as certainly as if you did it by shedding their their blood. The necessities of governments are as great as those of individuals. No government can exist without revenues to defray its expenses, and support its officers and agents. The revenue is the foo dindispensable to its existence. Deprive it of this, and you strip it of all power to perform its duties, bring it into contempt by its uselessness and helplessness, and ultimately destroy it as effectually as if it were overturned by domestic violence, or subjugated by the conquest of a foreign foe.

* * * * * * *

"Although the taxing power is but an incidental one, to be exercised only as the necessary means of performing governmental duties, it is nevertheless a branch of the legislative power which always, in its nature, implies not only the power of making laws, but of altering and repealing them, as the exigencies of the state and circumstances of the times may require: *Rutherforth's Institutes of Natural Law*, B. 3, ch. 3, s. 3. If one portion of the legislative power may be sold, another may be disposed of in the same way. If the power to raise revenue may be sold to-day, the power to punish for crimes may be sold to-morrow, and the power to pass laws for the redress of civil rights, may be sold the next day. If the legislative power may be sold, the executive and judicial powers may be put in the market with equal propriety. The result to which the principle must inevitably lead, proves that the sale of any portion of governmental power is utterly inconsistent with the nature of our free institutions, and totally at variance with the object and general provisions of the Constitution of the State. It may be urged that we must confide in the fidelity of the legislature, and that there is every ground for hope that they would not carry such measures to an unreasonable length. This is no answer to the argument. It is a question of constitutional authority, and not a case of confidence at all. Limitations of power, established by written constitutions, have their origin in a distrust of the infirmity of man. That distrust is fully justified by the history of the rise and fall of nations.

* * * * * * *

"It is, however, '*a rule of the public law, founded on a principle of justice which no government can disregard without violating the rights of its citizens, that taxes shall be assessed in such manner that all the citizens may pay their quota in proportion to their abilities, and the advantages they derive from the society.*' *9 Harris 114; 10 Harris 497.* This principle is sanctioned by writers of the highest authority. *Vattel*, B. 1, ch. 20, s. 240; *Rutherforth's Inst. of Nat. Law*, B. 2, ch. 3, s. 5; *Puffendorf's Law on Nations*, B. 7, c. 9, s. 10. It is expressly declared by Baron Puffendorf, that ' no immunities or exemptions' (from taxation ought) ought to be 'granted to certain persons to the defrauding or oppressing of the rest.' It is upon this principle that when the private property of the citizen is taken for public use, just compensation is to be made to him *out of the common fund*, in order that the contribution to the public interest may fall in a just proportion upon all the citizens: *Rutherforth*, B. 2, ch. 3, s. 5. As the legislature are necessarily the judges of the method of assessing taxes, it is to be presumed that they have regarded the rule of contribution sanctioned by justice and the equal rights of the citizens; and their enactments are not always subject to judicial review. Where they make appropriations to institutions of learning or charity, or grant lands or pensions to persons who have served in the defence of the nation, it is presumed to be a compensation for the good that has been done, or is to be done to the community. Where they grant to the same institutions or individuals an exemption from taxation, such grants, for

the same reasons, are not regarded as a violation of the rules of justice and equity. So long as there is no *contract*, which may tie the hands of succeeding legislatures against repealing such exemptions; and so long as they are not repealed, they seem to have been enforced as a legitimate exercise of legislative power: 1 S. & R. 62; 6 Watts 435. But where there is no pretence of an intention to equalize the taxation among the people, but an avowed purpose to sell to one class of citizens an exemption from all taxes forever, and thus to throw all the public burdens upon the other for all time to come, it is, to all intents and purposes, imposing a tax upon them without the consent of their representatives, and is such a plain, palpable and open violation of the rights and liberties of the people, such a clear case of transcending the just limits of legislative power, that the judiciary is bound to pronounce such an act null and void.

* * * * * * *

"The case of *New Jersey vs. Wilson*, 7 Cranch, 161 is cited in opposition to this doctrine. It was decided without argument on the part of the state. It has relation altogether to the power of the colonial government by treaty with a remnant of a tribe of Indians, who released lands claimed by them in consideration of the grant of other lands free from taxation. The Indians occupied in some respects the condition of a separate nation. Nations are frequently obliged for the sake of the public peace to make concessions to each other which could not be justified if the transaction were between a state and individuals; and the rules

which govern in the construction of the treaty-making power do not apply to ordinary contracts. But it is a sufficient answer to this case to say that the powers of the colonial government of New Jersey, before our free governments were established by the revolution of 1776, furnished no rule whatever for ascertaining the powers of the legislature of Pennsylvania under our present Constitution."

In *Brewster vs. Hough*, *supra*, the Court, at Page 144, say:

"To that decision, based as it is upon a subject particularly within the cognizance and jurisdiction of the Supreme Court of the United States, we yield all due deference; and should feel bound to follow it in a like case, could one come before us, until the tribunal which made the decision should overrule it.

"Perhaps it may well be supported, on the ground that the act was in the nature of a treaty with the Indians, which the legislature of New Jersey might, in 1758, well make with a body of them, residing within the borders of the state, but constituting a separate and distinct people, governed by their own laws.

"The general rights of a legislature to surrender the power of taxing a portion of the property within the state, by a contract with some of its own citizens, in such manner as to deprive a future legislature of the right to subject such property to its proportion of the public burdens, and this without an express grant of power in the Constitution, does not appear to have been considered in that case.

"In *Hardy vs. Waltham*, 7 Pick. R. 108, it was held that an estate acquired by Harvard College, which was held under lease, was exempted from taxation, it having been acquired before its revenues amounted to £500 per annum. By the colonial act of 1650, which is considered as the original charter of Harvard College, taken in connection with certain previous acts, all the lands, etc., of the college, not exceeding the value of £500 per annum, were exempted from taxation. The Court said: 'This grant or charter was irrepealable in its nature,' etc. And, again, 'This original grant is expressly confirmed by the chapter of the Constitution respecting Harvard University, so that the legislature has not constitutional power to tax the property belonging to the institution, within the limits of the original grant. It is an immunity which is protected by the very words of the Constitution.' "

In *East Saginaw Manfg. Co. vs. East Saginaw*, *supra*, the Court at Page 273 say:

"Now it has been too often remarked by the Courts to render it important for us to enlarge upon it here, that the power of taxation is one of the essential powers of sovereignty, which the state must exercise again and again, as often as its needs or its interests may require; and one that cannot in the least be crippled or abridged, without to that extent crippling the state, impairing its vitality, and in some degree endangering its existence. It is upon this ground that it has been so often and so

earnestly denied by learned and able jurists, that it is within the grant of authority to any legislative body, chosen as representatives of the people, to enter into any contract by which they bargain away any portion of the power to levy taxes for the needs of government. For the representatives of the people do not receive the powers of government for any purpose of sale or grant, but they take them in trust for a brief period, to be employed for the general welfare, within such limits as the people may have prescribed, and under obligations to transmit them unimpaired to their successors."

In *Raleigh &c. R. R. Co. vs. Reid, supra*, the following language used by the Court at Page 159, bearing upon the question, is also significant:

"Such is the law between individuals. Reverse the rule, and see how it ought to be when the state is granting charters. It is known that the state is obliged to have the means of support, and that no one set of members of the General Assembly, have power to impoverish the state for all time to come, or to throw the burden of taxation more heavily upon one class of citizens, than on another. So the terms of the charter must be construed in reference to this known state of facts, and the state must be considered as saying: 'As things now seem, a certain amount from your corporation is enough to meet the estimates.'"

In *West Wisconsin R. R. Co. vs. Board of Supervisors, supra*, the Court, in commending the dis-

senting opinions of Justice Miller and Field and Chief Justice Chase presented in *Washington University vs. Rouse*, 8 Wal 439, at Page 266, say:

> "But I cannot refrain from quoting some remarks of Mr. Justice Miller, as contained in his dissenting opinion in the case of *The Washington University vs. Rouse*, which seem to me to be a just criticism upon some of the decisions of that Court in regard to the validity of contracts, while presenting in a most forcible manner some objections to the doctrine upon which those decisions rest."

It is respectfully submitted that the Supreme Court of Minnesota did not err in the decision under review.

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# APPENDICES.

## Appendix A.

Chapter 54 of the Special Laws of Minnesota for 1875 as amended by chapter 87 of the Special Laws of 1885.

Section 1. That for the purpose of aiding the Duluth & Iron Range Railroad Company, a corporation organized under and by virtue of the laws of the State of Minnesota, to construct a railroad from Duluth by the most feasible route, to the northeast corner of township number sixty (60) north, of range number twelve (12) west, there is hereby granted to said corporation, or its assigns, an amount of swamp lands belonging to, or that may hereafter accrue to, the said state equal to ten (10) sections per mile for each mile of railroad that is or may be completed by said railroad company in the construction of its said railroad, to be selected from any swamp lands belonging to, or that may accrue to said state, unsold or unappropriated; provided, that said road from its present terminus in township sixty-two (62) north, range fifteen (15) west, shall be constructed and in operation to the village of Duluth on or before the sixth (6th) day of March one thousand eight hundred and eighty-eight (1888).

Sec. 2. That when the Governor of the state shall be duly notified (by the company aforesaid), of the completion of each and every ten miles of said road, it shall be his duty to have the same examined by sworn commissioners, and on their cer-

tificate of the completion of each consecutive ten miles in a good and substantial manner as contemplated by this act, he shall notify the Secretary of State, who shall forthwith cause swamp land certificates to be issued to the president and directors of said railroad company for the number of acres to which they shall be entitled under this act, for the number of miles so completed as provided in section one; *Provided*, That within twelve months from the passage of this act the company aforesaid shall cause a survey of the line of said road to be made and file a map of the same with the Secretary of State; *And provided further*, That none of the lands hereby granted shall be subject to taxation until the expiration of five years from the issuance of the patent by the state, unless previously sold or disposed of by said railroad company.

Sec. 3. That after the filing of the map showing the line of road as provided in the last preceding section, all of the swamp lands belonging to the state for ten miles on each side of the line of said road shall be withdrawn from sale for the purposes contemplated in this act.

## Appendix B.

### Chapter 111 of the *Special Laws of Minnesota* for 1873.

Section 1. In consideration of an annual payment of a percentum as provided in this section, by

the St. Paul, Stillwater and Taylor's Falls Railroad Company, the railroad, its appurtenances and appendages, and all other property, estate and effects of said corporation held or used for, in or about the construction, equipment, renewal, repair, maintaining or operating its railroad, including the lands granted to said company to aid in the construction of said railroad, as also the stock and capital of said company shall be and hereby are forever exempt from all taxation and from all assessments, and in consideration of the grants made to and the privileges conferred upon the said company shall during the first three years from and after January 1, 1872, on or before the first day of March of each and every year, pay into the treasury of this state one per cent on the gross earnings of said railroad, the first payment to be made on the first day of March, one thousand eight hundred and seventy-three, or within fifteen days after the passage of this act; and shall during the seven years next ensuing after the expiration of the three years aforesaid, pay into the treasury of the state, on or before the first day of March of each year and every year, two per cent on the gross earnings of said railroad; and shall from and after the expiration of ten years from the said first day of January, one thousand eight hundred and seventy-two, on or before the first day of March of each and every year, pay into the treasury of this state three per cent of the gross earnings of said railroad, and the payment of such per centum annually as aforesaid shall be and is in full of all taxation and assessment

whatever. And for the purpose of ascertaining the gross earnings aforesaid an accurate account of such earnings shall be kept by such company, an abstract whereof shall be furnished by said company to the Treasurer of this state on or before the first day of February in each year, the truth of which abstract shall be verified by affidavits of the treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstract, full power is hereby vested in the Governor of this state or any other person appointed by law prescribed to examine, under oath, the officers and employes of said company or other persons; and if any person so examined by the Governor or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for security to the state the payment of aforesaid per centums, it is hereby declared that the state shall have a lien upon the railroad of said company, and upon all the property, estate and effects of said company whatever, real, personal or mixed, and the lien hereby secured to the state shall have and take precedence of all demands, decrees and judgments against said company; *Provided*, That the lands of said company shall be subject to taxation as soon as sold, leased or contracted to be sold or leased.

Sec. 2. Any railroad company owning or operating or which may hereafter own or operate any line or lines of railroad in this state, may by resolution of its board of directors attested by

its secretary and filed with the Secretary of State, accept and become subject to the provisions of this act, and in such case the payment of such percentage in lieu of taxes in accordance therewith, shall commence from and after the first day of March next after the date of the completion of thirty miles of such line hereafter built, or of the entire line if the same shall be less than thirty miles in length.